(Signatures)

Suzanne BASTID
Vice-President, presiding

Francisco A. FORTEZA
Member

Zenon ROSSIDES
Member

Jean HARDY
Executive Secretary

New York, 25 April 1975

Judgement No. 202

(Original: French)

Case No. 195:
Quéguiner (Education grant)

Against: **The Secretary-General of the Inter-Governmental Maritime Consultative Organization**

Request of a staff member of IMCO that he continue to benefit from the education grant system in force when he entered upon his duties, despite subsequent amendments thereto.

Applications for intervention.—Their admissibility.

Request for rescission of the decision of the Secretary-General amending IMCO Staff Rule 103.8 (d).—*Effect* erga omnes *which the judgement would have if that request were granted.—Request rejected.*

Request for compensation for the loss sustained by the Applicant as a result of the application of the new text of Staff Rule 103.8 (d).—*Contention of the Applicant that he is entitled to receive an annual flat-rate education grant of $1,500.—Argument based on IMCO Staff Regulation 12.1.—Obligation of the Secretary-General to respect the acquired rights of staff members in exercising his power to amend. —Question whether the Applicant has an acquired right to the education grant system as established when he entered upon his duties.—Contractual status of the Applicant.—Power of the competent authorities of the Organization to amend unilaterally the conditions of employment laid down in the Staff Regulations and Staff Rules.—The limitation of the right of amendment based on respect for acquired rights concerns the rights of the staff member expressly stipulated in the contract.—Apart from the salary, no benefit accruing to the Applicant was mentioned in his contract.—Respect for acquired rights as meaning that no amendment can have an adverse retroactive effect in relation to a staff member.—Contention of the Applicant that the education grant is of a personal nature and hence contractual.—Nature of the amendment made.—Legality of comparable measures concerning the non-resident's allowance and the allowances payable under the definition of dependency.—Steps taken to attenuate the unfavourable monetary consequences of the new rules.—Reasonable character of those rules.—The Respondent is not obliged to pay compensation for a reduction in the amount of the education grant received by the Applicant.—The new education grant system did not prevent the Applicant from agreeing to the renewal of his contract.—The Applicant agreed to the amendment which the Secretary-General intended to make to the Staff Rules but no legal inferences can be drawn therefrom.—Conclusion of the Tribunal that in changing the bases for the computation of the education grant, the Secretary-General exercised the powers accorded him by the Staff Regulations.*

The applications for intervention are admissible.—The application and the applications for intervention are rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, Vice-President, presiding; Mr. Zenon Rossides; Mr. Mutuale Tshikankie; Mr. Francisco A. Forteza, alternate member;

Whereas, on 9 December 1974, Jean Quéguiner, a staff member of the Inter-Governmental Maritime Consultative Organization, hereinafter called IMCO, filed an application which did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 9 December 1974, Joachim Jens, Truong-Buu-Khanh and Ismaila Wade, staff members of IMCO, submitted applications for intervention in the case and requested the Tribunal to declare the judgement rendered concerning the application of Jean Quéguiner applicable to them;

Whereas the Applicant, after making the necessary corrections, again filed the application on 17 January 1975;

Whereas, in the pleas of his application, the Applicant requests the Tribunal:

"(1) To rescind the decision of the Secretary-General of IMCO of 21 [29] July [1971] as contrary to the Staff Regulations of the Organization in that it prejudices the acquired rights of the staff member as defined in Staff Regulation 12.1.

"(2) To award him therefore first, payment of an annual education grant of a flat rate of $1,500, taking into account the increase of 4 June 1973 and, second, retroactive compensation for the scholastic years 1972–1973 and 1973–1974, i.e. $1,125, representing the loss sustained as a result of the amendment of Staff Rule 103.8 *(d)*.

"(3) To award him a sum of 6,000 French francs to compensate him for the various costs and fees incurred in connexion with this appeal.";

Whereas the Respondent filed his answer on 3 March 1975;

Whereas, on 27 March 1975, the Applicant requested oral proceedings;

Whereas the Applicant filed written observations on 31 March 1975;

Whereas at the request of the Tribunal the Applicant and the Respondent submitted additional written statements on 23 July and 21 August 1975 respectively;

Whereas, on 5 September 1975, the presiding member decided that there would be no oral proceedings;

Whereas the facts in the case are as follows:

The Applicant entered the service of IMCO on 5 May 1968 as Deputy Secretary-General under a fixed-term contract of three years' duration which, on 5 May 1971, was extended for a duration of four years. The letters of appointment specified that under the contract, the Applicant would enjoy the conditions of employment and fundamental rights and would be required to observe the duties and obligations laid down in the Staff Regulations and Staff Rules of the Organization, due account being taken of any subsequent amendments to those texts.

The education grant is governed by Staff Regulation 3.2 and Staff Rule 103.8. At the time when the Applicant was recruited by IMCO, Staff Regulation 3.2 provided:

"3.2. The Secretary-General shall establish terms and conditions under which an education grant shall be available to a staff member serving outside his recognized home country, whose dependent child under the age of twenty-one is in full-time attendance at a school, university, or similar educational institution of a type which will, in the opinion of the Secretary-General, facilitate the child's re-assimilation in the staff member's recognized home country. The maximum amount of the grant shall be $1,000 per annum for a child . . ."

and Staff Rule 103.8 contained a paragraph *(d)* reading as follows:

"*(d)* In the case of attendance in an educational institution outside the United Kingdom, the amount of the grant shall be $1,000 a year. In the case of attendance in the United Kingdom, the amount of the grant shall be equal to 75 per cent of the cost of attendance, up to a maximum grant of $1,000 a year. Where attendance is for less than two thirds of the scholastic year, the amount of the grant shall be that proportion of the annual grant which the period of attendance bears to the full scholastic year."

On 29 July 1971, the Head of the Administrative Division announced in a circular (PER/G/71/644) that in order to bring the IMCO rule affecting the amount of the education grant into line with the corresponding rules of the United Nations and the other specialized agencies, the Secretary-General had decided, with effect from the scholastic year 1971–1972, to amend Staff Rule 103.8 *(d)* to read as follows:

"(d) In the case of attendance at an educational institution outside the duty station, the amount of the grant shall be:

"(i) Where the institution provides board for the child, 75 per cent of the cost of attendance and board up to a maximum grant of $1,000 a year;

"(ii) Where the institution does not provide board, $500 plus 75 per cent of the cost of attendance up to a maximum grant of $1,000 a year.

"*(e)* In the case of attendance at an educational institution at the duty station, except as in *(b)* (ii) above, the amount of the grant shall be 75 per cent of the cost of attendance up to a maximum grant of $1,000 a year.

"*(f)* Where attendance is for less than two thirds of the scholastic year, the amount of the grant for that year shall be that proportion of the grant otherwise payable which the period of attendance bears to the full scholastic year."

That decision had been accompanied by consultations with several high officials of the Organization, among them the Applicant, who had expressed his agreement. On 5 April 1972, in accordance with Staff Regulation 12.2, the Secretary-General reported to the IMCO Council on the amendment to the Staff Rules. On 12 April 1973, the United Nations General Assembly having decided to increase the maximum amount of the education grant from $1,000 to $1,500, the Secretary-General submitted to the IMCO Council a proposal whereby Staff Regulation 3.2 would be amended accordingly; if that proposal was adopted, the Secretary-General proposed to amend Staff Rule 103.8 *(d)* to *(f)*, as of September 1972, by substituting the figure $1,500 for $1,000 and the figure $650 for $500; the Secretary-General's proposal was adopted by the Council on 4 June 1973. On 31 August 1973, in a memorandum addressed to the Secretary-General, the Applicant complained that the amendment made to Staff Rule 103.8 *(d)* two years previously was prejudicial to him; he wrote, *inter alia:*

". . .

"This new rule . . . is more restrictive than the old one, especially for staff members in service whose children are studying in countries where the cost of attendance at an educational institution is reduced to a minimum. This is so in my case, for example, since in the scholastic years 1971–1972 and 1972–1973, I received only $669.28 and $657.37 respectively.

"If the adoption of the new rule cannot be called in question, its application to staff members in service at the time of its entry into force is essentially contestable in so far as it is prejudical to them. This is the problem of respect for acquired rights or advantages, which is explicitly provided for in chapter XII, paragraph 12.1, of the Staff Regulations.

"This principle of respect for acquired rights or advantages is, moreover, applied quite generally in the United Nations system. Thus, the International

Labour Office always applies transitional provisions for the benefit of staff members in service when it adopts restrictive measures. The same is true of UNESCO. In particular, when UNESCO amended, in a restrictive way, the non-resident's allowance system, it did not apply it to staff members in service but only to staff recruited subsequent to that decision.

"I therefore have the honour to request you kindly to re-establish in my case the education grant at the flat rate set out in former Rule 103.8, i.e. $1,000 per year. Clearly, I am not requesting an exceptional and personal measure, and your favourable decision would without any doubt apply also to other staff members who are now, or subsequently find themselves in, a similar situation, in so far as they have suffered, or suffer in the future, prejudice as a result of the application of the new Rule 103.8."

The Secretary-General held consultations on the legal and administrative aspects of the question raised by the Applicant. On 8 October 1973, the Head of the Administrative Division submitted to him a review of the practice of other organizations of the United Nations system, which showed that the question had not arisen in any of the organizations consulted but that, if it were to arise, those organizations would probably not treat it as a question of acquired rights, although most of them would be inclined to make some transitional arrangements. On 23 October 1973, the Head of the Legal Division submitted to the Secretary-General an opinion in which, while envisaging the possibility of adopting transitional measures, he concluded that the amendment in question in no way infringed on the acquired rights of the staff members concerned. On 19 December 1973, the Head of the Administrative Division informed the Applicant that the Secretary-General had decided to apply a transitional measure for the scholastic year 1971–1972 and therefore to pay him a further sum of $346.22, representing the difference between the flat $1,000 payable under the old rule and the amount which he had actually received under the amended rule for the scholastic year 1971–1972. On 16 August 1974, the Applicant submitted to the new Secretary-General a petition in which he and four other staff members requested the Secretary-General to re-examine the conditions of application of the new Rule 103.8 *(d)* to all officers in service at the time of its adoption and requested that they continue to benefit from the provisions of the old rule until such time as the application of the new rule should become more favourable to them. On 10 September 1974, in a reply setting forth the reasons for his decision addressed individually to each petitioner, the Secretary-General informed them that he could not grant their request and could only confirm the decision of his predecessor. On the same day, the Secretary-General informed the Applicant that he agreed to the case being referred directly to the Tribunal. On 9 December 1974 the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The contested decision directly prejudices the acquired rights of staff members, since the education grant is personal in nature and hence contractual and not statutory. The possibility that his children can attend an educational institution outside the duty station is for each staff member a determining consideration in his acceptance of employment with the Organization. The personal nature of the grant appears even more clearly when viewed in the light of the new procedure for computing the grant: the sums received by staff members depend directly on the family situation and country of origin of each staff member. This personal nature is confirmed by the disparity among the payments received by staff members since the grant system was changed.

2. It is specious to allege that some staff members will receive a grant larger than that which they received under the old rule, since only one staff member has received a grant of more than $1,000 since the scholastic year 1972–1973, whereas all the others have suffered an annual loss.

3. The amendment in question is not a simple revision of the procedure for computing the grant. In fact, it involves a fundamental change, since today the variations depend on the educational institution attended whereas in the past a flat-rate system was applied.

4. The transitional measure adopted for the scholastic year 1971–1972 is paradoxical in its reasoning, for if the education grant is of a statutory nature, the Secretary-General and the Council could change it without requesting the views of the staff concerned and were not obliged to adopt any transitional measures, and if the grant is of a contractual nature, the transitional measures should not be limited to the scholastic year 1971–1972 without the consent of each staff member.

Whereas the Respondent's principal contentions are:

1. The purpose of the amendment in question was to ensure that the amount paid to each staff member was proportionate to the expenses actually incurred by him in respect of the education of a child, whereas under the old—less equitable—rule, all staff members received the same amount regardless of their actual expenditure.

2. The procedure for the computation of the education grant is of a statutory nature and the Applicant is not entitled to a specific sum. Since the amendment was adopted in accordance with the proper procedure and for perfectly legitimate reasons, since it did not relate to matters which formed an essential part of the contract of the Applicant, and since it was not applied with retroactive effect, it cannot be maintained that it prejudiced the acquired rights of the Applicant.

3. The transitional measure was not taken because IMCO was obliged in law to take it, but because the Secretary-General considered it administratively necessary to alleviate hardship to the staff members concerned.

4. The amendment was adopted and applied with the express consent of the Applicant.

The Tribunal, having deliberated from 25 September to 3 October 1975, now pronounces the following judgement:

I. Three applications for intervention have been submitted respectively by Joachim Jens, Truong-Buu-Khanh and Ismaila Wade, staff members of IMCO. The Tribunal notes that these three individuals are *prima facie* in a situation similar to that of the Applicant with regard to the allocation of an education grant. That being so, the three applications for intervention are declared admissible.

II. The application filed with the Tribunal concerns the decision taken on 29 July 1971 by the Secretary-General to amend Staff Rule 103.8 (*d*). Pursuant to Staff Regulation 12.2, a report on that amendment was submitted by the Secretary-General to the Council of the Organization at its twenty-eighth session, on 5 April 1972.

In his first plea, the Applicant requests the Tribunal to rescind "the decision of the Secretary-General of IMCO of 21 [sic] July as contrary to the Staff Regulations of the Organization in that it prejudices the acquired rights of the staff member as defined in Staff Regulation 12.1".

The Tribunal observes that if that request were granted as formulated, the judgement would have the effect of eliminating Staff Rule 103.8 *(d)* in respect of all staff members of IMCO, irrespective of the date on which they entered upon their duties. In criticizing the decision taken on the ground that it would prejudice acquired rights, the Applicant has clearly admitted that the new rule can be criticized only by a staff member whose contract is dated prior to 29 July 1971. Thus the plea requesting the rescission of Staff Rule 103.8 *(d)*, i.e., requesting a decision with effect *erga omnes*, is in contradiction with the very basis of the request, which is grounded on the contractual

situation of the Applicant and on respect for acquired rights. It must therefore be rejected.

III. The Applicant also requests that he be awarded compensation equivalent to the loss he sustained in the allocation of the education grant because the new text of Staff Rule 103.8 *(d)* was applied in violation of the acquired rights resulting from his contract. The Secretary-General having decided to defer until the scholastic year 1972–1973 the implementation of the new text, the application evaluates the loss sustained at $1,125. This figure is obtained by taking into account the sums actually received by the Applicant, i.e. $697 in 1972–1973 and $678 in 1973–1974, and the fact that the IMCO Council, on 4 June 1973, increased the maximum amount of the education grant from $1,000 to $1,500. The Applicant therefore contends that he is entitled to receive, from 1973 onwards, the revised maximum of $1,500 as an annual flat-rate grant.

The Applicant claims to be entitled to this grant on the basis of Staff Regulation 12.1, which states:

> "These Regulations may be supplemented or amended by the Council, without prejudice to the acquired rights of staff members."

Staff Regulation 12.2 concerns the amendments which the Secretary-General "may make to implement these Regulations". The Tribunal recognizes that it follows from this text that the Secretary-General's power to amend can only be properly exercised if the acquired rights of staff members are respected.

IV. The question posed by the present case is thus to determine whether the Applicant has an acquired right to the education grant system as established when he entered upon his duties, an acquired right which cannot be prejudiced unless compensation is paid.

At the time when the Staff Rules were amended, the Applicant was bound by a contract whose terms, set out in a letter from the Secretary-General dated 2 April 1971, were accepted by the Applicant on 30 April 1971. This letter, which extended a previous contract, contains a number of provisions concerning the Applicant personally: post, duration of contract, administrative status, salary, obligation to subscribe to IMCO accident insurance. It also refers to the conditions of employment and fundamental rights, and the duties and obligations, laid down in the Staff Regulations and Staff Rules of the Organization, "due account being taken of any subsequent amendments to those texts".

This latter provision expressly records an essential element in the Applicant's contractual situation. He agreed in advance that amendments to the Staff Regulations and Staff Rules would be applicable to him. Thus, the competent authorities of the Organization may in principle amend unilaterally the conditions of employment and fundamental rights and the rights and obligations laid down in the Staff Regulations and Staff Rules.

V. The limitation of the right of amendment set out in Staff Regulation 12.1 obviously concerns the rights of the staff member expressly stipulated in the contract. In Judgement No. 19 *(Kaplan)*, the Tribunal stated that all matters were contractual which affected "the personal status of each member—e.g., nature of his contract, salary, grade". In the present case, no benefit accruing to the Applicant, apart from his salary, was mentioned in his contract.

Respect for acquired rights also means that the benefits and advantages accruing to a staff member for services rendered before the entry into force of an amendment cannot be prejudiced. An amendment cannot have an adverse retroactive effect in

relation to a staff member, but nothing prevents an amendment to the Staff Rules where the effects of such amendment apply only to benefits and advantages accruing through service after the adoption of such amendment (Judgement No. 82, *Puvrez*).

VI. The Applicant contends that the education grant, although it constitutes additional remuneration, is of a personal nature, and hence contractual, and that it constitutes a determining consideration in acceptance of the contract which binds a staff member to the Organization.

The Tribunal observes that the amendment made concerns the procedure for computation of the Organization's contribution to educational expenses. The new procedure for computing the grant takes more direct account of the sums actually spent on attendance at an educational institution. The new system corresponds to that already applied in the other organizations of the United Nations system. While it does in fact lead to a reduction in the grant paid on that account to some staff members, it does not seem that the decision exceeds the powers accorded to the Organization in the contract accepted by the Applicant.

The legality of comparable measures concerning the non-resident's allowance (Judgement No. 51, *Poulain d'Andecy,* ILO Tribunal) and the allowances payable under the definition of dependency (Judgements No. 82, *Puvrez* and No. 110, *Mankiewicz*) has been recognized, and the Tribunal sees no valid reason for treating the education grant differently.

VII. It is true that international organizations generally seek to attenuate the unfavourable monetary consequences of a new rule. The Tribunal notes in this connexion that the Secretary-General deferred the application of the new system for one year. Moreover, as soon as the United Nations General Assembly decided to increase the maximum amount of the education grant from $1,000 to $1,500, the Secretary-General of IMCO submitted to the Council a proposal whereby the Staff Regulations of that Organization would be amended in the same way, which would also entail a readjustment of the figures mentioned in Staff Rule 103.8 *(d)* to *(f)*.

The Tribunal recognizes that it may happen that, since the cost of attendance at an educational institution is minimal in certain countries, the contribution of the Organization, if established partially on that basis, may involve quite small sums and that the over-all grant may be reduced. But the Tribunal considers that it is not unreasonable for an education grant to constitute a contribution to expenses actually incurred, taking into account the special features of the educational system in the country in which the dependant child is studying.

In the present case, the Tribunal is not considering a dispute concerning the interpretation of the Staff Rules and must confine itself to noting that the Respondent is not obliged in law to pay compensation for a reduction in the amount of the education grant received by the Applicant, whether that reduction is established in relation to the flat-rate amount in force until 1971 or in relation to the maximum amount established in 1973, which has never constituted the flat-rate sum applicable.

The Applicant's claim to a flat-rate grant of $1,500 seems all the less admissible in that he appears to be claiming the right to benefit by both the advantages of the system in force prior to 1971 and the increase in the maximum amount accepted by the IMCO Council in 1973.

VIII. The Tribunal also notes that in any event the Applicant's claim can concern only the contractual relations resulting from the contract accepted by him on 30 April 1971, that is the relations running until 4 May 1975. The new education grant system does not seem to have prevented the Applicant from agreeing to the renewal of his contract—which shows clearly that as regards the importance of that factor with respect to acceptance of the contract, the Applicant's argument is unfounded.

The Tribunal notes that, although it falls within the context of the contract accepted on 30 April 1971, the education grant for the scholastic year 1974–1975 is not the subject of any request by the Applicant.

IX. The Tribunal notes lastly that the Applicant was kept informed of the amendment which the Secretary-General intended to make to the Staff Rules and that he expressed his agreement in writing. The Tribunal does not consider that that agreement was necessary for an amendment to the Staff Rules, since it considers that the question of the Applicant's acquired rights did not arise. While admitting that it was a reasonable administrative practice to obtain the agreement of high-level officials before taking the initiative of amending the Staff Rules, the Tribunal can draw no legal inferences from that agreement, which was not necessary in order for the Secretary-General to exercise the powers accorded him by the Staff Regulations.

X. In conclusion, the Tribunal decides that, in changing the bases for the computation of the education grant, the Secretary-General exercised the powers accorded him by the Staff Regulations and that any reductions in the grant payable to the Applicant entail no liability on the part of the Organization.

XI. For these reasons, the Tribunal decides:

(1) The applications for intervention are admissible;

(2) The application and the applications for intervention are rejected.

(Signatures)

S. BASTID
Vice-President, presiding

F. A. FORTEZA
Alternate Member

Z. ROSSIDES
Member

Jean HARDY
Executive Secretary

MUTUALE TSHIKANKIE
Member

New York, 3 October 1975

Judgement No. 203

(Original: English)

Case No. 198: Sehgal

Against: **The Secretary-General of the United Nations**

Non-renewal of a fixed-term appointment.

Question whether due consideration was given to the Applicant's case with a view to his continued employment as contemplated.—The fact that the Applicant's case was given consideration at each stage did not absolve the Respondent from all obligation when the decision not to renew the contract was taken.

Question whether the requisite procedures were applied to deal with the Applicant's rebuttal of the criticisms contained in his periodic report.—Conflict of views as to what procedures were appropriate.—It is unnecessary for the Tribunal to pronounce upon that difference of views, the key issue being whether the action taken was appropriate to the particular circumstances of the case.—Link between the question of the investigation of the Applicant's rebuttal and the need for due consideration of the renewal of his